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80-1551

No.

Supreme Court of the United States

October Term, 1980

IN THE MATTER OF THE APPLICATION

OF

FRANK GODERRE,

Petitioner,

against

CITY OF PEEKSKILL, JOHN E. WALSH, City Manager and Commissioner of Public Safety, and CITY OF PEEKSKILL POLICE DEPARTMENT, WALTER J. JONES, Police Commissioner,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

PETITION FOR CERTIORARI

RICHARD HARTMAN
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300 Old Country Road
Mineola, N. Y. 11501
(516) 742-9000

Questions Presented.

May a public employee be discharged, consistent with the Fourteenth Amendment, solely due to his having been found liable to a third party along with the respondents herein for false arrest based on that public employee's performance of duty as a police officer in executing a warrant issued by another municipality and executed upon the direction of the respondents?

Does Section 75 of the New York State Civil Service Law, as interpreted by the New York State Court of Appeals, adequately safeguard the procedural due process rights guaranteed to citizens by the Fourteenth Amendment of the Constitution of the United States?

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980.

No._____

IN THE MATTER

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The Application of FRANK GODERRE,

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Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK.

PETITION FOR CERTIORARI.

Petitioner Frank Goderre respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals of New York entered in this case on December 16, 1980.

Opinions Below.

The opinion of the New York Court of Appeals is reproduced in the Appendix hereto (at pp. 1a-2a, *infra*) and is reported at____N. Y. 2d____, ____N. Y. S. 2d____, ___N. E. 2d____. The memorandum opinion of the New York Supreme Court, Appellate Division, Second Department, is reproduced at pages 3a to 9a, *infra,* and is reported at 71 A. D. 2d 892, 419 N. Y. S. 2d 631. The determination and decision of the respondents is reproduced at pages 10a to 17a, *infra,* and is unreported.

Jurisdiction.

The opinion and judgment of the New York Court of Appeals issued on December 16, 1980. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) and §1257(3).

Relevant Regulations and Constitutional Provisions.

Duties and Rules of Conduct, Police Department, City of Peekskill, Articles 12.11, 12.15 and 12.19; Section 75 of the New York State Civil Service Law and the Fourteenth Amendment to the Constitution of the United States, the relevant provisions in this case are reproduced at pages 18a-19a.

Statement of the Case.

The petitioner herein was a police officer employed by the City of Peekskill (respondents) on or about the 13th day of April, 1973. That until the 9th day of August, 1978, the petitioner was never the subject of a disciplinary hearing in the City of Peekskill and to the best of his knowledge was satisfactorily performing his duties as a police officer within the City of Peekskill.

That on or about the 27th day of August, 1977, the petitioner arrested a citizen of the City of Peekskill on an arrest warrant issued by Suffolk County and executed that warrant in the presence of other officers. Upon the return by petitioner and his brother police officers to the Police Headquarters maintained by the respondents, it was discovered that the individual who was arrested was not the subject of the Suffolk County warrant and he was released.

That the individual who was arrested pursuant to that warrant commenced a tort action against the respondents and petitioner for false arrest. The plaintiff in that proceeding succeeded in obtaining a judgment against the petitioner and the respondents.

The City of Peekskill afforded the petitioner full representation in that proceeding brought by Pedro Juan Rivera against the City of Peekskill and Frank Goderre and, in fact, on the 18th day of October, 1977, affirmatively found that the petitioner herein had acted properly and with "probable cause" in arresting Pedro Juan Rivera and directed the defense of the petitioner herein.

The Appellate Division, Second Department, in its order granting the petition found that "unsuccessful defense" (presented by the respondents in the Rivera litigation) merely consisted of the testimony of petitioner. No appeal was taken by the City of Peekskill. Pedro Juan Rivera received judgment against the petitioner and the respondents on or about the 21st day of June, 1978. Less than a month later, on or about the 12th day of July, 1978, the respondents, acting through its agents and employees, determined that the initial order directing the representation of the petitioner was improper based upon new information (information that has never been brought forward).

On or about the 9th day of August, 1978, petitioner was charged with violating the Rules of Conduct of the Police Department of the City of Peekskill in that he did fail to conduct a proper investigation and unlawfully arrested one Pedro Juan Rivera.

On August 21, 1978, petitioner was afforded a hearing purportedly conducted pursuant to Section 75 of the New York State Civil Service Law and the City Manager, John E. Walsh, was designated as hearing officer. Walsh was also serving as Chief of Police.

The hearing was conducted without the benefit of a certified stenographer and was recorded only by a tape recording device over the objection of the attorney representing the petitioner. A review of that transcript disclosed statements apparently taken out of context and further discloses other discrepancies such as gaps in the official transcript. The transcript presented by the respondents is uncertified and does not bear any representation that it is a true and accurate transcript of the proceedings conducted.

Respondents' entire case, during said disciplinary proceeding, consisted of the judgment of the Supreme Court, Westchester County, that was rendered against the respondents and petitioner in favor of Pedro Juan Rivera. The Appellate Division made reference to the fact that the entire case presented by the respondents in that Supreme Court proceeding consisted of the testimony of the petitioner. The City of Peekskill paid said judgment and never appealed same.

The petitioner commenced this proceeding pursuant to subdivisions 3 and 4 of Section 7803 of the Civil Practice Law and Rules. A second cause of action was presented by petitioner that as the elected President of the Peeksill

Police Association (the union representing police officers employed by the respondents) he fell into disfavor with the respondents motivating the respondents to take affirmative action against him. The Appellate Division made no reference to petitioner's contention.

On August 13, 1979, the Appellate Division granted the petition herein and on December 3, 1979, granted the respondents' motion for leave to appeal to the Court of Appeals on the certified question, "Was the order of this Court dated August 13, 1979, properly made?"

The New York Court of Appeals reversed and reinstated the respondents' determination (Pet. App. 1a-2a). That Court impliedly expressly ruled the discharge proper under the

> "Order reversed, with costs, and the determination of respondents reinstated in a memorandum. Question certified answered in the negative." (Question certified: Was the order of the Appellate Division, Second Department, dated August 13, 1979, annulling the determination of the respondents-appellants finding petitioner-respondent guilty of violating its rules of conduct and terminating his employment as a police officer properly made?)

REASONS FOR GRANTING THE WRIT.

The decision below deprives petitioner of his rights under the Fourteenth Amendment as declared by this Court.

The decision of the New York Court of Appeals is contrary to the Fourteenth Amendment of the Constitution of the United States that guarantees the fundamental right of due process to citizens as follows:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process * * *"

It has been held that the right to due process of law constitutes a "privilege and immunity secured and protected by this amendment." *U. S. v. Sutherland,* 37 F. Supp. 344.

A. The decision below in effect precluded petitioner's due process rights by the imposition of a concept that may be equated with *res judicata* or collateral estoppel.

Petitioner was discharged from public employment because he executed a warrant of arrest in accordance with the directions of his superior officers leading to a judgment against both petitioner and respondents that the individual arrested was falsely arrested. The Court of Appeals in effect ruled that the finding of false arrest was *res judicata* of the facts as that judgment was found to be substantial evidence. The Court ruled,

> "We agree with Mr. Justice Charles Margett, dissenting below, that respondents' determination is supported by substantial evidence on the record as a whole" (Pet. App. 1a).

It should be noted that only three (3) items of evidence were introduced against petitioner, to wit: the Rules of Conduct of the Police Department, the judgment of the Supreme Court finding the false arrest and the charges and specifications. No additional evidence and no testimony was adduced against the petitioner since these three (3) items and it can reasonably be implied that the only probative item was the judgment which was held to be substantial evidence; it is obvious that petitioner was estopped from showing that no culpability existed on his part. Therefore, Section 75, since it fails to establish any

measure or standard of proof other than the words "substantial evidence," clearly fails to protect the right of procedural due process.

It has been held in *Garrity v. New Jersey,* 385 U. S. 493, that "policemen, like teachers and lawyers, are not relegated to a watered down version of constitutional rights" (*id.,* at 500).

Although the contrary view of the Appellate Division seems eminently sensible (Pet. App. 3a), we accept, as we must, the Court of Appeals determination that a judgment of false arrest constitutes substantial evidence of wrongdoing in the context of the rules and regulations of a police department but it should be noted that "a State cannot foreclose the exercise of constitutional rights by mere labels." *N.A.A.C.P. v. Button,* 371 U. S. at 429.

Thus the Court below was wrong in stating that petitioner's discharge was proper and the finding that a judgment of false arrest stands alone as substantial evidence of a violation of the police department rules and regulations and as such, violates petitioner's Fourteenth Amendment rights. Indeed, it is so clear that the Court below erred that summary reversal may be appropriate.

CONCLUSION.

For the above stated reasons, this petition for a writ of certiorari to the New York Court of Appeals should be granted.

Respectfully submitted,

RICHARD HARTMAN,
Attorney for Petitioner,
300 Old Country Road,
Mineola, N. Y. 11501
(516) 742-9000.

APPENDIX.

Memorandum Decision of the Court of Appeals of the State of New York.

COURT OF APPEALS,

STATE OF NEW YORK.

2 No. 574
IN THE MATTER

OF

FRANK GODERRE,

Respondent,

v.

CITY OF PEEKSKILL, *et al.*,

Appellants.

(574) Richard S. Scanlan, White Plains, for appellant.
Reynold A. Mauro & Richard Hartman, Mineola, for respondent.

Memorandum

The order of the Appellate Division should be reversed and the determination of respondents terminating petitioner's employment by the City of Peekskill as a police officer should be reinstated, with costs.

Memorandum Decision of the Court of Appeals of the State of New York

We agree with Mr. Justice Charles Margett, dissenting below, that respondents' determination is supported by substantial evidence on the record as a whole. We add only that, though it would have been better practice for the hearing examiner to make specific findings and conclusions rather than, as he did, to quote extensively from the findings and conclusions of the Supreme Court Justice who tried the false arrest action against petitioner and the City, it is clear from the hearing transcript that the examiner was aware of the difference between the false arrest trial and the hearing before him and sought by questioning petitioner in relation to the Supreme Court findings simply to give petitioner the opportunity to offer any explanation and present any evidence he wished in relation to the arrest of Pedro Rivera.

* * *

Order reversed, with costs, and the determination of respondents reinstated in a memorandum. Question certified answered in the negative. All concur.

Decided December 16, 1980

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition.

B/rm

Leon D. Lazer, J. P.
Samuel Rabin
J. Irwin Shapiro
Charles Margett, JJ.

____AD2d ____
1515 E

A-May 21, 1979

IN THE MATTER

OF

FRANK GODERRE,

Petitioner,

v.

CITY OF PEEKSKILL, *et al.*,

Respondents.

Hartman & Lerner, Mineola, N. Y. (Reynold A. Mauro of counsel), for petitioner.

Richard S. Scanlan, White Plains, N. Y., for respondents.

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition

Proceeding pursuant *to CPLR article 78* to review a determination made after a hearing, dismissing the petitioner from his position as a police officer.

Petition granted; determination annulled, on the law, without costs or disbursements, and respondents are directed to reinstate petitioner, with back pay, less the amount of compensation earned in any other employment or occupation and any unemployment benefits he may have received.

The petitioner was charged with having violated several of the "Duties and Rules of Conduct for the Police Department, City of Peekskill" in that he failed to conduct a proper invstigation and wrongfully arrested one Pedro Rivera. The charges were precipitated by the entry of a money judgment, and underlying decision of the Supreme Court, Westchester County, in which petitioner, and through him, the City of Peekskill, were found liable to Pedro Rivera in the principal amount of $6,500 for false arrest. The basic facts surrounding the false arrest do not appear to be disputed.

On August 24, 1977 the Suffolk County police advised the Peekskill police that an arrest warrant had been issued for Pedro Juan Rivera. A physical description was provided which gave Rivera's age, height, weight, coloring, and physical characteristics, i. e., Rivera had a mustache, a scar, and a tattoo on his shoulder. Rivera was wanted for attempted robbery in the first degree. The information was given to Sergeant Hayes who took a group of officers, including the petitioner, to premises at 192 Union Avenue for the purpose of arresting Rivera. The landlady acknowledged that Rivera, who was a truck driver, lived at that address but stated that he was not at home.

Several days later, the petitioner noticed a truck outside the premises and called for a back-up team to assist in the

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition

arrest of Rivera. The officers entered the premises and found a male individual who acknowledged that he was Pedro Rivera. He was approximately the same height, weight and coloring of the Pedro Juan Rivera who was wanted by the Suffolk County police. The petitioner advised Rivera that he was wanted by the Suffolk County police. Rivera responded that he did not know what he could have done in Suffolk County, but made no strong objection to the arrest. Rivera was arrested and taken to the stationhouse where his identification was further checked by the Shift Supervisor, who determined that this Pedro Rivera was not the individual wanted by the Suffolk County police. They were so notified and Rivera was released.

Rivera then commenced a tort action alleging false arrest. An internal investigation was made and it was determined that the petitioner "had reasonable grounds to believe that Rivera was the subject of the warrant" and that he should therefore be defended by the City of Peekskill. The unsuccessful defense merely consisted of the testimony of the petitioner. No appeal was taken by the City of Peekskill. On the last day to appeal, the charges which are the subject of this proceeding were filed against the petitioner.

At the hearing, the only evidence introduced against the petitioner was the judgment and decision in Rivera's suit for false arrest. On behalf of the petitioner, Sergeant Hayes and another officer testified that they also would have arrested Rivera. A third individual who participated in the arrest testified that at "line-up" the patrolmen in the shift were told only that they should arrest Pedro Rivera, who lived at 192 Union Avenue, because he was wanted by the Suffolk County police for attempted robbery in the first degree. No physical description was given.

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition

The hearing officer refused to admit the testimony of an alleged expert who would have expressed an opinion as to whether the petitioner had followed proper procedure.

The petitioner testified to the general circumstances of the arrest as outlined above. He stated that he did not believe that it was significant that the Rivera he arrested did not have a mustache, because facial hair could be readily shaved. The petitioner also testified that he did not personally check for the presence of the tattoo because it was not normal procedure to ask a suspect to disrobe in his home. It is noted that there were other persons present at the time of the arrest and that Rivera's wife was calling other family members. Goderre testified that he was concerned that the arrest be completed and the suspect taken to the stationhouse before more people arrived who may have complicated the arrest.

The hearing officer found the petitioner guilty of the charges and directed that he be dismissed. The written decision merely lists the exhibits and witnesses and reproduces the decision rendered in the false arrest action. The evidence was neither reviewed nor analyzed. However, a review of the hearing transcript leaves little doubt that the hearing officer considered the Supreme Court finding of civil liability for false arrest to be prima facie evidence that the petitioner was guilty of the charges.

We agree that such a judgment is of some probative value. However, in the instant circumstances, the judgment is insufficient to constitute substantial evidence that the petitioner violated the Peekskill Police Department rules by failing to conduct a proper investigation and wrongfully arresting Pedro Rivera.

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition

In determining whether an administrative determination is supported by substantial evidence, it is necessary to look at the evidence as a whole and to consider the evidence produced by one party in connection with the evidence produced by the other party. Thus, seemingly conclusive evidence may lose all probative force when examined in light of other evidence (see, generally, *Matter of Stork Rest. v. Boland,* 282 NY 256, 274; 23 Carmody-Wait 2d, NY Prac, §145:20).

The respondents failed to introduce any proof as to what proper investigatory procedure and proper arrest procedure entails. Nor was it demonstrated how the petitioner violated such procedures except by relying on the collateral determination that Rivera had been falsely arrested. However, that determination was made in a wholly different procedural setting. It must be recognized that standards of reasonable conduct are partially dependent upon the interests sought to be protected in a particular case. Certainly, the interest in protecting innocent persons from the tortious encroachment of being falsely arrested is significantly different from the interest of preserving the integrity of a police force by punishing those who are guilty of misconduct. Absent evidence that the petitioner personally violated proper police procedure, the collateral determination that he wrongfully arrested Rivera is of only limited probative value. For purposes of departmental charges, it must also be shown that the petitioner's conduct was unreasonable in light of existing procedure and training.

From this perspective, there is no basis for personally penalizing the petitioner for the wrongful arrest. Although the Supreme Court Justice who decided the false arrest action found that the only similarity between the person ar-

rested and the person wanted by the Suffolk County police was the name, the instant record shows that they were also of similar height, weight and coloring. The Justice's presumption that Sergeant Hayes initially went to Rivera's address only for purposes of inquiry is rebutted by Hayes' hearing testimony that he went to the premises to arrest Rivera. Although the petitioner could have personally checked for the tattoo, no evidence was introduced to rebut his testimony that it was not normal procedure to ask a suspect to disrobe in his home. Furthermore, petitioner's explanation that he was anxious to effect the arrest before the arrival of Rivera's family members is not unreasonable. The conclusion that the petitioner's conduct was in accord with proper procedure is further supported by the unrebutted testimony that the other officers on the shift were instructed to arrest Pedro Rivera who lived at the subject address, and that those officers were not given a description of Rivera. The almost inescapable inference is that the patrolmen were to bring Rivera into headquarters where the supervisor would then determine whether it was the Rivera for whom the Suffolk County police had an outstanding warrant. This is exactly what was done.

In light of the evidence introduced at the hearing, the collateral and unreviewed determination that Rivera was falsely arrested is of diminished probative value. In the absence of any evidence that the arrest was occasioned by a violation of proper procedure, the unrebutted evidence that the petitioner acted in reasonable accord with his training and instructions is persuasive. The courts of this and other jurisdictions have frequently dismissed criminal indictments because there was no reasonable cause to make the initial stop or arrest. In so doing, it is generally not anticipated that the arresting officer will be exposed to

August 13, 1979 Order of Appellate Division, Second Judicial Department, Granting the Petition

charges of misconduct. We are therefore hesitant to sustain such charges based upon the mere scintilla of proof that an individual had been wrongfully arrested. More proof is required to satisfy the substantial evidence test and, therefore, the determination should be annulled.

Lazer, J.P., Rabin and Shapiro, JJ., concur.

MARGETT, J., dissents and votes to confirm the determination and dismiss the proceeding on the merits, with the following memorandum:

I believe respondents' determination to be supported by substantial evidence on the record as a whole. It should be noted that the description of the suspect possessed by petitioner was that of a man 12 years younger than Mr. Rivera, with a scar on his *nose*. Furthermore, Mr. Rivera had apparently been asleep and was in a partial state of undress at the time he was arrested. There would have been little difficulty in checking for a shoulder tattoo with the words, "Padre, Madre, Mia", before compelling the suspect to accompany the officers to police headquarters.

In light of the fact that this is merely one of four incidents in which petitioner has made questionable use of his authority as a police officer, I do not believe the penalty of dismissal was unwarranted (see *Matter of Pell v. Board of Educ.*, 34 NY2d 222).

August 13, 1979

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978.

(Seal)

CITY OF PEEKSKILL

CITY HALL

Peekskill N. Y. 10566

September 19, 1978

Mr. Frank Goderre
15 Revolutionary Road
Peekskill, N. Y. 10566

Dear Mr. Goderre:

Enclosed find copy of my decision in the matter of your Disciplinary Hearing. Please note you have been terminated as of 4 p.m. September 19, 1978.

The Comptroller's office has been directed to check the records and pay you any monies due.

Also be advised that the charges preferred against you dated September 8, 1978 are hereby withdrawn without prejudice.

Very truly yours,

JOHN E. WALSH
Hearing Officer

JEW:vcb
Enclosure

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978.

STATE OF NEW YORK,

CITY OF PEEKSKILL.

IN THE MATTER

of

Disciplinary Charges against FRANK GODERRE under and pursuant of Section 75 of the Civil Service Rules of the State of New York and the City of Peekskill.

JOHN E. WALSH, Hearing Examiner

Patrolman Frank Goderre has been charged with failing to conduct a proper investigation and unlawfully arresting one Pedro Rivera. Specification No. 1 states that Patrolman Frank Goderre did wrongfully arrest one Pedro Rivera for attempted robbery and that in doing so, he (Patrolman Goderre) violated the following Duties and Rules of Conduct for the Police Department of the City of Peekskill:

12.1.1 Conduct which brings discredit upon the Department.

12.1.5 Inattention to duty

12.1.9 Incompetency or inefficiency in the performance of duty.

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978

The written charge and specification was served on Patrolman Goderre and a hearing was scheduled to be heard August 21, 1978, at 9:00 a.m. in City Hall.

The hearing commenced at approximately 9:55 a.m. on August 21, 1978 and the charges were presented by Special Counsel Leone Pecoraro. Mr. Pecoraro submitted a decision of Supreme Court Justice Howard A. Jones as the basis of this disciplinary hearing since this matter of a wrongful arrest was the subject of a lawsuit against the City of Peekskill and Patrolman Goderre.

Judge Jones, after a two day non-jury trial, rendered his decision on June 21, 1978, and in his Findings of Fact and Conclusions of Law stated as follows:

The statewide teletype reflecting an arrest warrant issued for a Pedro Juan Rivera for attempted robbery was received in due course at the Peekskill Police Department on August 24, 1977, and it clearly contained sufficient biographical data to distinguish the person sought from this plaintiff. Indeed, the only common factor between the two was the similarity of name, a fairly common one. Nevertheless, a group of officers led by a Sergeant Hayes went to plaintiff's residence on that date, presumably to check whether plaintiff was the wanted suspect. They were informed by the landlady that plaintiff was on a trip as part of his occupation as an independent long-haul trucker. Upon their return to headquarters, the teletype was posted along with an accompanying handwritten note by Hayes containing a detailed description of the scars and tattoos of the original suspect, apparently garnered through telephone calls to the originating agency in Suffolk County, either before or after the visit to plaintiff's apartment. This handwritten note combined most of the

same biographical and physical data contained in the teletype as well as the new physical description, scar and tattoo information, all of which apparently were then summarily associated with the Pedro (no middle name) Rivera living at plaintiff's address.

Three days later, on August 27, this defendant police officer, Goderre, at some point shortly after coming on duty that day, saw the teletype and memo still posted; later, he saw plaintiff's rig parked near his apartment. He went to the location without a warrant or even the teletype, verified that plaintiff was now home and after a backup team summoned by him had arrived, he proceeded to arrest plaintiff. Shortly after having gone to sleep in the afternoon hours of that day, plaintiff was awakened by the defendant officer, placed under arrest, read his rights, compelled to dress, denied his request to make a phone call and was led out of his apartment building, into a patrol car and taken to Police Headquarters where he was held in handcuffs, and *incommunicado,* although proclaiming his innocence throughout. Finally, a simple physical examination for identifying scars and tattoos eliminated him as the wanted suspect and he was thereafter released.

Defendant police officer's actions were justified if, by a preponderance of evidence, he shows he had reasonable cause for believing that plaintiff was the suspect sought by the Suffolk County authorities. This reasonable cause existed if the facts and circumstances known to the defendant or the information readily available to him before making the actual arrest were such as to lead a reasonable and prudent man to believe that the plaintiff was the suspect sought. The total lack of preliminary inquiry or observation at the apartment as to full name, age, date of

birth, color of hair, height and weight (all different), moustache, scars and tattoos (all non-existent) and Suffolk County residence (plaintiff was a Peekskill resident for sixteen years), compels the conclusion that reasonable cause did not exist. Hence, civil liability is clearly established.

With respect to compensatory damages, plaintiff has testified that as a member of a minority living in a predominantly white neighborhood, he has suffered substantial mental anguish, shame and humiliation and injury to his reputation as a hard-working and respectable member of the community. No medical evidence as to treatment for these conditions has been introduced. However, it is uncontested that plaintiff has no arrest or conviction record and is a respectable citizen.

As to the measure of damages, the only serious factual disputes between the parties relate to the length of time that plaintiff was detained at headquarters (after the 15-20 minute detention at the apartment) and the number of friends, neighbors or relatives who either witnessed the plaintiff being led out of his apartment in handcuffs or his final release from headquarters.

The Court finds that by a preponderance of credible evidence, the period of detention at headquarters was in excess of the 15 or so minutes claimed by defendants and closer to the two hour period claimed by the plaintiff. The evidence on this point, particularly certain alterations made in defendant's time records for the date in question (albeit with attempted explanation), and common sense, compels this conclusion.

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978

During the Hearing dates, August 21, 1978 and August 24, 1978 testimony was given by the following witnesses:

1. Dep. Comm. of Public Safety Walter Jones

2. Richard Laboda a former Police Dept. Station House Officer

3. Sgt. Edward Hayes

4. Patrolman John Michael Cindrich

5. Sgt. Randy Shubert

6. Patrolman Frank Goderre

7. Arthur Haugh

8. Mr. Benjamin Hersh, Esq.

Also introduced was the following documentary evidence:

City of Peekskill Exhibit 1—Letter to Police Officer Frank Goderre notifying him of the charges and specifications and advising him of his suspension.

City of Peekskill Exhibit 2—Duties and Rules of Conduct for the Police Department of the City of Peekskill.

City of Peekskill Exhibit 3—Decision of Supreme Court Justice Howard A. Jones.

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978

City of Peekskill Exhibit 4—Copy of judgment *re:* Pedro Rivera, Plaintiff against the City of Peekskill and Frank Goderre, Defendant.

Respondent's Exhibit No. 1—Subpoena *Duces Tecum* for certain files, books and records pertaining to the arrest of Pedro Rivera.

Respondent's Exhibit No. 2—Patrolman Goderre Answer to the charges brought against him.

Respondent's Exhibit No. 3—Interview of Patrolman Goderre by Lt. J. Nelson.

Respondent's Exhibit No. 4—Interview of Sgt. Randy Shubert by Lt. J. Nelson.

Respondent's Exhibit No. 5—Teletype received from Suffolk Co. Police Dept. by the City of Peekskill.

Respondent's Exhibit No. 6—Memo from Dep. Comm. Walter Jones to Peter Davidson *re:* Investigation of Pedro Rivera arrest.

Respondent's Exhibit No. 7—Copy of Section 120.60 of Criminal Procedure Law.

Respondent's Exhibit No. 8—Sgt. Edward Hayes Memo Description of Pedro Juan Rivera.

Respondent's Exhibit No. 9—Sgt. Shubert's memo to Sgt. Hayes.

Findings and Determination of Administrative Hearing Examiner, with Transmittal Letter Dated September 19, 1978

Respondent's Exhibit No. 10—Letter from Corp. Counsel Peter Davidson to Police Officer Goderre *re:* Rivera against the City of Peekskill and Frank Goderre.

I have examined the transcript of this hearing and carefully gone over the Exhibits and based upon the record herein, I find the respondent guilty of the charges. Accordingly, it is my determination that the punishment to be imposed upon the respondent is dismissal from Police Service of the City of Peekskill effective 4 p.m. September 19, 1978.

Transcript of the hearing is filed in the City Clerk's Office and a copy is to be placed in the Personnel Record of the respondent.

JOHN E. WALSH,
Hearing Officer

Duties and Rules of Conduct for the Police Department—City of Peekskill, New York.

ARTICLE XII

RULES OF CONDUCT

12.1 A member of the Department found guilty of any of the following acts will be considered in violation of the Rules and Regulations which govern the Police Department of the City and will be subject to disciplinary action.

12.1.1 Conduct which brings discredit upon the Department.

2. Failure to perform a duty.

3. Disobedience of an order.

4. Insubordination or disrespect toward a Superior Officer.

5. Inattention to duty.

6. Lounging or sleeping on duty.

7. Being absent from duty without proper authorization.

8. Leaving duty assignment without being properly relieved or without proper authorization.

9. Incompetency or inefficiency in the performance of duty.

Duties and Rules of Conduct for the Police Department—City of Peekskill, New York

10. Entering any tavern, liquor store or bar in uniform or any part thereof except when it is necessary for inspection or for the immediate performance of a police duty.

11. Drinking alcoholic beverages while on duty. Members in plain clothes may drink alcoholic beverages while on duty, only when necessary to accomplish a police purpose while acting under specific orders of a Superior Officer.

12. Drinking alcoholic beverages while in uniform or any part thereof whether on or off duty.

13. Intoxication whether on or off duty.

14. Violation of any duly constituted law.

15. Disorderly conduct.

16. Immoral conduct.